

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1979 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

VIJAY DAHYABHAI MAKWANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for the Petitioner.

MR RM CHAUHAN,AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 28/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 16-1-98 passed by the Police Commissioner, Ahmedabad City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

As can be seen from the grounds of detention supplied to the petitioner, reliance is placed on eight criminal cases registered against the petitioner under section 379 of the IPC seven of which are pending trial and one is under investigation. Besides these cases, further reliance is also placed on the statements of four witnesses for the alleged incidents of 8-12-97 and 9-12-97 when the concerned witnesses were beaten in public after being dragged out from their houses either on the ground that the concerned witness did not allow the petitioner to keep spare-wheel in his house or when the witness did not accede to the request of the petitioner to give Rs.8000/- and to retain the scooter for their same. On both these occasions, many people gathered to watch the incident of beating. However, the people started running helter-skelter when the petitioner rushed towards the crowd with open knife and an atmosphere of fear and terror was created and the even tempo of life was disturbed.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

This petition is required to be allowed on the ground that assuming for the sake of arguments that the allegations made against the petitioner are true, the same at best can be treated as breaches of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioner is a dangerous person is also vitiated. The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The

order of detention dated 16-1-98 is quashed and set aside. The detenu Vijay Dahyabhai Makawana is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs. Writ to be sent to Rajkot Jail.

Verified copy